IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1022 OF 2003

1. Shri Jaiprakash Uggarsain Jain)
2. Smt Pushpa Jaiprakash Jain)
3. Late Shri Uggrasain J. Jain)
4. Mrs Dharmadevi Uggarsain Jain)
   6-40, Jain Vihar, 3rd Road,)
   J.V.P.D. Scheme,)
   Vile Parle (West), Bombay 56) ...Appellants

Vs.

1. M/s.Pravin Clearing Agency)
   Merchant Room,)
   Byculla Parcle Dept.)
   Byculla, Bombay 400 027)

2. United India Insurance Co.Ltd)
   B.R.O. No.1, Stadium House,)
   Churchgate, Veer Nariman Road)
   Bombay 20.) ...Respondents

Shri M.B. Kotak for the Appellants.

Ms V.M. Sawant for the second Respondent.

CORAM : ABHAY S. OKA, J.

DATE : SEPTEMBER 07, 2006.

JUDGMENT:

1. On 19th August, 2006 submissions of the Advocates appearing for the parties were fully heard. The challenge in this First Appeal is to the judgment and award dated 27th March, 2002 passed by the learned Member of the Motor Accident Claims Tribunal at Mumbai on a Claim Petition filed by the Appellants under section 163-A of the Motor Vehicles Act, 1988.

2. The case of the Appellants is that their deceased son by the name Kushal was running business. He met with an accident near Britannia Biscuit Company, Ray Road (East), Mumbai on 16th November, 1995 at about 11.45 a.m. According to the case of the Appellants, first Respondent is the registered owner of the vehicle involved in the accident and the vehicle was validly insured with the second Respondent at the time of accident. It appears that the factum of accident, the ownership of the vehicle by the first Respondent and the validity of insurance was not seriously challenged by the second Respondent-insurer. The contention raised by the second Respondent before the Tribunal was that the Appellants are not entitled to compensation unless the Appellants establish negligence on the part of the driver of the offending vehicle. The learned Member of the Tribunal held that the claim for compensation was under section 163-A of the said Act of 1988 and therefore it was not necessary for the Appellants/claimants to establish negligence on the part of the driver of the motor vehicle. It was held that while deciding a Claim Petition under section 163-A of the said Act of 1988, the Tribunal has to only see whether the victim met with a motor accident and whether the vehicle

concerned was involved in the accident. On the basis of the structured formula, the learned Member of the Tribunal granted total compensation of Rs.3,88,000/- to the Appellants with interest thereon at the rate of 9 per cent per annum as against their claim of Rs.4,84,500/- on the basis of alleged income of Rs.38,346/- of the deceased as reflected from the return of the income-tax during the financial year 1994-95.

3. Shri Kotak, the learned Counsel appearing for the Appellants submitted that as the Claim Petition was one under section 163-A of the said Act of 1988 there was no option but to follow the structured formula incorporated in the Second Schedule to the said Act of 1988. He submitted that as per the structured formula, figure of Rs.7,20,000/- in the last column of Second Schedule will apply in case of the Appellants and after deducting 1/3rd of Rs.7,20,000/-, the compensation payable will be Rs.4,84,500/-. He submitted that in addition to the aforesaid sum, an amount of Rs.4,500/- will be payable on account of funeral expenses and loss of estate as provided in Second Schedule to the said Act of 1988. He submitted that the Tribunal had no discretion to adopt multiplier depending upon the ages of the

Appellants. He submitted that the Tribunal had no option of taking a multiplier of its own choice. He has relied upon several decisions of this court and the Apex Court which are discussed in the later part of this decision. The learned Counsel appearing for the second Respondent submitted that the Apex Court itself has found that the formula adopted by the Second Schedule is defective and the same needs modification. She submitted that on plain reading of section 163-A read with Second Schedule it was open for the Tribunal to apply appropriate multiplier considering the facts of the case. She pointed out that in this case, on the date of filing the claim, the respective ages of the Appellants were 54 and 52. According to her, considering the average longevity, the learned Member of the Tribunal has rightly taken the multiplier of 15.

4. I have carefully considered the submissions made by the learned counsel appearing for the parties. Section 163-A of the said Act of 1988 reads thus:

> "163A:- Special provisions as to payment of compensation on structured formula basis:-
>
> (i) Notwithstanding anything contained in

this Act or in any other law for the time being in force or instrument having the force of law the owner of the motor vehicle or the authorised Insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be,

Explanation - For the purposes of this sub-section "permanent disability" shall have the same meaning and extend as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the

official gazette, from time to time, amend the second Schedule."

The second Schedule provides for amount of compensation payable in case of death depending upon the annual income of the victim. Note below the tabular form in the second Schedule provides that the amount of compensation arrived at in case of fatal accident claim shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. The second Schedule further provides that in case of death, general damages of Rs.2,000/- on account of funeral expenses will have to be awarded and general damages of Rs.2,500/- on account of loss of estate will have to be awarded. The said amounts are payable over and above the compensation amount mentioned in the second Schedule.

5. Turning back to the facts of the case, the evidence on record shows that the date of birth of the deceased was 09th April, 1973. Thus, on the date of death the deceased had completed age of 22 years. The finding of the Tribunal as regards income of the deceased is based on evidence of Chartered Accountant examined by the Appellants and a true copy of

income-tax return. The finding of the Tribunal is that yearly income of the deceased was Rs.38,346/-. Considering the respective ages of the Appellants who are the parents of the deceased and considering the fact that the deceased was unmarried, the Tribunal adopted multiplier of fifteen years. The Tribunal deducted 1/3rd amount from the yearly income and applied multiplier of fifteen to the multiplicand Rs.25,500/-. Thus, the compensation was calculated at Rs.03,83,400/- to which a sum of Rs.2,000/- was added on account of funeral expenses and a further sum of Rs.2,500/- was added under the heading of loss of estate. Thus, the total compensation awarded was Rs.3,88,000/-. The Tribunal has awarded interest at the rate of 9 per cent per annum from 01st June, 1997 on the ground that though the Claim Petition was lodged on 09th October, 1996, notices were served on the opposite parties after 11th February, 1997 and the returnable date was fixed as 18th June, 1997.

6. Shri Kotak placed reliance on the decision of the Apex Court in the case of the **New India Assurance Co. Ltd. Vs. C.M.Jaya and Ors. (2002 ACJ Page 271)**. He submitted that not granting compensation by strictly adopting the structured formula under section 163A amounts to re-writing the statute which is not

permissible as held by the Apex Court in the said decision. He placed reliance on another decision of the Full Bench of Karnataka High Court in the case of **Guruanna Vadi & Anr. Vs. General Manager, Karnataka State Road Transport Corporation & Anr (2001 ACJ 1528)**. He placed reliance on the observation made by the Full Bench in paragraph No.35 of the said decision. The relevant part of paragraph No.35 reads thus:

> "Second Schedule talks of age of victim on the basis of which the multiplier is fixed. The age of the victim thus would be the only relevant factor for determining the multiplier. Hence, we hold that the Tribunals cannot adopt a multiplier lower than the one permitted in the Second Schedule on the basis of the age in the case of claimants other than the wife and children."

Referring to another decision of the Apex Court in the case of **H.C.Rebello and Ors. Vs. Maharashtra State Road Transport Corporation & Anr. (1999 ACJ Page 10)**, it is submitted that whenever there are two possible interpretations in a beneficial statute, the one which

subserves the object of legislation namely benefit of the subject should be accepted. He submitted that the second Schedule refers to different figures of yearly income. The last two figures are Rs.36,000/- and Rs.40,000/-. He submitted that in the present case, since the income of the deceased slightly was more than Rs.38,000/-, his income should be taken as Rs.40,000/- for the purpose of calculating the compensation and the compensation amount will have to be fixed by deducting 1/3rd from Rs.7,20,000/-. He submitted that the Tribunal has not considered the fact that in case of death of a young boy in the context of Indian Society, expectancy of income is not limited only till the time the boy is expected to marry. He submitted that the parents expect their son to support them till the last breath. Lastly, Shri Kotak has placed reliance on decision of the Apex Court in the case of **Bandhua Mukti Morcha Vs. Union of India and Ors. (AIR 1984 Supreme Court Page 802)** and submitted that if there is a statute prescribing a judicial procedure governing the particular a case, the court must follow such procedure and it is not open for the court to bypass the statue and to evolve a different procedure at variance with the procedure provided under the statute.

7. The learned counsel appearing for the second Respondent-Insurance Company placed reliance on decision of the Apex Court in the case of **U.P. State Road Transport Corporation and Ors. Vs. Trilok Chandra & Ors. [I(1996) ACC Page 592(SC)]**. She pointed out that in paragraph No.17 of the said decision the Apex Court pointed out that the calculation of compensation and the amount worked out in the second Schedule suffers from several difficulties. Paragraph No.17 of the said decision reads as under:

> "17. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in Item No.1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs.3000/-. The total should be Rs.3000 X 15 = 45,000/- but the same is worked out at Rs.60,000/-. Similarly, in the second item the multiplier is 16 and the annual income is Rs.9000; the total should have been Rs.1,44,000/- but the same is shown to be Rs.1,71,000/-. To put it briefly, the table abounds in such mistakes.

> Neither the Tribunals nor the Courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is improvement over the earlier position that ordinarily it should not exceed 16. We though it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davis' case."

8. Perusal of the aforesaid decision of the Apex Court shows that the court was dealing with a claim

under section 166 of the said Act of 1988. While dealing with the said case, the Apex Court has referred to the second Schedule. The observations of the Apex Court in the said case will have to be construed to mean that while considering a regular claim under section 166 of the said Act of 1988, the second Schedule can be used only as a guide and it is not conclusive. At this stage, it will be necessary to refer to another decision of the Apex Court in the case of **Paspati Prasad & Anr. Vs. Suresh PD.Shah [(2002)10 Supreme Court Cases Page 562)**. The Apex Court in the said judgment has noticed a lot of anomalies in the second Schedule. The Apex Court referred to the affidavit of the Ministry of Road and Transport Highways in which it was stated that process of preparing a draft amendment to the said Act of 1988 has been started.

9. In the case of **Oriental Insurance Company Ltd. Vs. Hansrajbhai V. Kodala and Others [(2001) 5 Supreme Court Cases Page 175]**, the Apex Court extensively considered the provisions of section 163A. The Apex Court held that the compensation awarded under section 163A is final and it is not an interim measure and there is no procedure for refund or adjustment of the compensation paid under section

163A. In paragraph No.22 the Apex Court has summarised the position of law. The paragraph No.22 reads thus:

> "22. In the result, the contention of the claimants that right to get compensation under Section 163-A is additional to claim compensation on no-fault liability is rejected for the following reasons:
>
> (1) There is no specific provision in the Act to the effect that such compensation is in addition to the compensation payable under the Act. Wherever the legislature wanted to provide additional compensation, it has done so (Sections 140 and 141).
>
> (2) In case where compensation is paid on no-fault liability under Section 140 and 161 in case of "hit-and-run motor accidents", the legislature has provided adjustment or refund of the said compensation in case where compensation is determined and payable under the award on the basis of fault

liability under Section 168 of the Act. There is no such procedure for refund or adjustment of compensation paid where the compensation is paid under Section 163-A.

(3) The words "under any other law for the time being in force" would certainly have different meaning from the words "under this Act" or "under any other provision of this Act".

(4) In view of the non obstante clause "notwithstanding anything contained in this Act" the provisions of Section 163-A would exclude determination of compensation on the principle of fault liability.

(5) The procedure of giving compensation under Section 163-A is inconsistent with the procedure prescribed for awarding compensation on fault liability. Under Section 163-A compensation is awarded without proof of any fault while for getting compensation

> on the basis of fault liability the claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or the vehicle concerned.
>
> (6) Award of compensation under Section 163-A is on a predetermined formula for payment of compensation to road accident victims and that formula itself is based on criteria similar to determining the compensation under Section 168. The object was to avoid delay in determination of compensation".

In paragraph No.24 the Apex Court has again drawn attention of the Central Government to the necessity of carrying out appropriate revision and/ or correction to the second Schedule. In the case of **Deepal Girishbhai Soni & Ors. Vs. United India Insurance Company Ltd., Baroda [(2004) 5 Supreme Court Cases Page 385]** the larger Bench of the Apex Court had again occasion to consider its earlier decision in the case of Oriental Insurance Company Ltd. (Supra). The Apex Court held that by enacting section 163A the Parliament intended to provide for final amount of compensation. The Apex Court observed that under the

second Schedule compensation is to be paid on structured formula not only having regard to the age of the victim and his income but also the other factors relevant therfor. The Apex Court held that the remedy under section 163A is distinct from remedy under section 166 of the said Act of 1988. Again in the said decision, the Apex Court noted discrepancies existing in the second Schedule.

10. It must be noted that section 163A starts with non-obstante clause which has an overriding effect. Section 163A provides for special provision as to payment of compensation on a structured formula. Thus, the provisions of section 163A will apply though there are contrary provisions existing under the said Act of 1988 or any other law for the time being in force. Thus, while deciding an Application under section 163A of the said Act, the compensation will have to be calculated only in accordance with the structured formula in the second schedule under the said Act of 1988. In the present case, the income of the deceased was found to be Rs.38,346/- per year. The second Schedule provides that in case where age of the victim was above 20 years but not exceeding 25 years, compensation payable where yearly income of the deceased was Rs.36,000/- is Rs.06,48,000/- and

compensation payable in a case where yearly income of the deceased is Rs.40,000/- is Rs.07,20,000/-. One third of the amount is required to be deducted on account of personal expenses. Thus, there is no provision which specifically applies to a case where annual income of the deceased is Rs.38,346/-. The submission of Shri Kotak is that the income should be taken as Rs.40,000/-. In the case of a **Divisional Controller, KSRTC Vs. Mahadeva Shetty & Anr. [(2003)7 Supreme Court Cases Page 197]** the Apex Court has held that under the said Act of 1988, the compensation has to be a just compensation and not a bonanza. In my view, the only rational way of calculating the compensation in the present case will be to take the average of the compensation payable in a case where income is Rs.36,000/- and the compensation payable where income is Rs.40,000/-. As noted earlier, in this case, the income is Rs.36,346/-. Thus, the amount will have to be calculated by adding Rs.6,48,000/- to Rs.07,20,000/- and by dividing the same by two. The figure comes to Rs.06,84,000/-. One third of the said amount will have to be deducted which comes to Rs.02,28,000/-. Thus, the amount payable as per the structured formula will be Rs.04,56,000/- plus Rs.04,500/- payable under clause 3 of the second Schedule. In the present case,

the amount awarded is Rs.03,88,000/-.

11. It must be noted here that the Tribunal could not have taken multiplier of 15 as the Tribunal is bound to follow the structured formula under section 163A of the said Act of 1988 without making any deviation. Thus, to that extent the Tribunal has committed an error. The Tribunal has awarded interest at the rate of 9% per annum. So far as rate of interest is concerned, the structured formula does not provide for any particular rate of interest. In this case as the application is under section 163A, the compensation has been awarded without proof of negligence. The partents of the deceased whose age was 22 years are the only dependants. Their respective ages were 54 and 52 on the date of filing of claim. In my view, considering the aforesaid peculiar facts, interest ought to have been at the rate of 6.50% per annum.

12. In the present case, the compensation payable as per the second Schedule in the structured formula comes to Rs.04,60,500/-. However, as held earlier, the interest could not have exceeded 6.5%. Though a case is made out for enhancing the compensation amount, interest will have to be reduced from 9% to

6.5%. Even if compensation amount, is enhanced from Rs.3,88,500/- to Rs.4,60,500/-, interest will have to be reduced from 9% to 6.5%. Taking an overall view of the matter, the compensation awarded is just and fair. No case is made out for modification of the amount.

13. Hence, Appeal is dismissed with no orders as to costs.

JUDGE